S.B.Civil Revision Petition No.419/2006

Mani Shanker Joshi.
vs.
Kamlesh and another.

Date : 7.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. CS Kotwani, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner's suit for damages on the ground of malicious prosecution was dismissed by the trial court vide judgment and decree dated 16.4.2005. Appeal against the said judgment and decree was dismissed by the first appellate court vide judgment and decree dated 17.5.2006. Hence, this revision petition.

According to learned counsel for the petitioner, the courts below dismissed the suit of the plaintiff for malicious prosecution whereas the suit which was filed by the plaintiff's wife against the same defendants and because of the same F.I.R. and criminal case, was decreed by the trial court. It is also submitted that the court below committed serious error of law in dismissing the suit and the appeal.

I have considered the submissions of learned counsel for the petitioner and perused the facts of the case.

The petitioner's allegation is that the respondents' father lodged one F.I.R. No.282/1995 against the present petitioner/plaintiff. Challan was filed and thereafter ultimately, the petitioner was acquitted vide court judgment dated 2.9.2002 in criminal case no.694/1998. The petitioner claimed damages of Rs.11,000/-. It appears from the findings recorded by the two courts below on issue no.1 that two courts concurrently held that there was dispute between the parties and there was a quarrel, therefore, the F.I.R. was lodged. Both the courts concurrently held that the petitioner failed to prove any malice in launching the prosecution. It will be worthwhile to mention here that the original complainant – father of the respondents died before filing of the suit.

In view of the above, I do not find any error of fact or law in the impugned judgments and decrees.

Consequently, this revision petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya